

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EASYTEX CORPORATION LIMITED,

Plaintiff,

vs.

PETER & FRANK OF NY, CORP., CHUL
KYU KIM a/k/a KIM CHUL KYU a/k/a
CHUK CHUL KIM a/k/a ROBERT CHUL
KIM a/k/a CHUL KYOO KIM a/k/a
CHULKYOO KIM a/k/a KIM K. CHUL,
BARO SHIPPING CO., LTD., TOP TEN
TRANS, INC., GFA, INC., 3 WIN INC.,
MERCURY, AMERICAN
INTERNATIONAL LINE, INC., SOON
CHAN HONG a/k/a SOON C. HONG a/k/a
SOONCHAN C. HONG a/k/a SOON CHAN
HONG a/k/a CHAN S. HONG a/k/a HONG
S. CHAN a/k/a HONG SOON CHANG d/b/a
SOONCHAN HONG CUSTOM HOUSE
BROKER, STOP & STOR, jointly and
severally,

Defendants.

ECF CASE

CASE NO: 07-CV-3907

ANSWER AND COUNTERCLAIM

Defendants, Peter & Frank of NY, Corp. and Chul Kyu Kim, by their attorney,
Daniel K. Lee, Esq., as and for their Answer to the Complaint, say:

JURISDICTION AND VENUE

1. Defendants neither admit nor deny the allegations in paragraph 1 of the
Complaint, lacking knowledge or information sufficient to form a belief as to
the truth or falsity thereof.

2. Defendants neither admit nor deny the allegations in paragraph 2 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
3. Defendants neither admit nor deny the allegations in paragraph 3 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
4. Defendants neither admit nor deny the allegations in paragraph 4 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
5. Defendants neither admit nor deny the allegations in paragraph 5 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

PARTIES

6. Defendants neither admit nor deny the allegations in paragraph 6 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
7. Defendants admit that Peter & Frank of NY, Corp. (“Peter & Frank”) is a corporation of State of New York with principal place of business at 1239 Broadway, Room 810, New York, NY. Defendants deny all other allegations contained in paragraph 7 of the Complaint.
8. Defendants admit that Peter & Frank was engaged in business importing certain textiles and garments. Defendants deny all other allegations contained in paragraph 8 of the Complaint.

9. Defendants neither admit nor deny the allegations in paragraph 9 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
10. Defendants deny all allegations contained in paragraph 10 of the Complaint.
11. Defendants admit the address of Defendant Chul Kyu Kim (“Kim”).
Defendants neither admit nor deny all other allegations in paragraph 11 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
12. Defendants deny all allegations contained in paragraph 12 of the Complaint.
13. Defendants deny all allegations contained in paragraph 13 of the Complaint.
14. Defendants neither admit nor deny the allegations in paragraph 14 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
15. Defendants neither admit nor deny the allegations in paragraph 15 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
16. Defendants neither admit nor deny the allegations in paragraph 16 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
17. Defendants neither admit nor deny the allegations in paragraph 17 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

18. Defendants neither admit nor deny the allegations in paragraph 18 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
19. Defendants neither admit nor deny the allegations in paragraph 19 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
20. Defendants neither admit nor deny the allegations in paragraph 20 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
21. Defendants neither admit nor deny the allegations in paragraph 21 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
22. Defendants neither admit nor deny the allegations in paragraph 22 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
23. Defendants neither admit nor deny the allegations in paragraph 23 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
24. Defendants neither admit nor deny the allegations in paragraph 24 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

25. Defendants neither admit nor deny the allegations in paragraph 25 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
26. Defendants neither admit nor deny the allegations in paragraph 26 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
27. Defendants neither admit nor deny the allegations in paragraph 27 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
28. Defendants neither admit nor deny the allegations in paragraph 28 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
29. Defendants neither admit nor deny the allegations in paragraph 29 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
30. Defendants neither admit nor deny the allegations in paragraph 30 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
31. Defendants neither admit nor deny the allegations in paragraph 31 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

32. Defendants neither admit nor deny the allegations in paragraph 32 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
33. Defendants neither admit nor deny the allegations in paragraph 33 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
34. Defendants neither admit nor deny the allegations in paragraph 34 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
35. Defendants neither admit nor deny the allegations in paragraph 35 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
36. Defendants neither admit nor deny the allegations in paragraph 36 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
37. Defendants neither admit nor deny the allegations in paragraph 37 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

STATEMENT OF FACTS

38. Defendants repeat and reallege each response to preceding paragraphs contained in the foregoing with the same force and effect as if set forth in full herein.

39. Defendants neither admit nor deny the allegations in paragraph 39 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
40. Defendants neither admit nor deny the allegations in paragraph 40 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
41. Defendants neither admit nor deny the allegations in paragraph 41 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
42. Defendants neither admit nor deny the allegations in paragraph 42 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
43. Defendants neither admit nor deny the allegations in paragraph 43 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
44. Defendants neither admit nor deny the allegations in paragraph 44 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
45. Defendants neither admit nor deny the allegations in paragraph 45 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

46. Defendants neither admit nor deny the allegations in paragraph 46 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
47. Defendants neither admit nor deny the allegations in paragraph 47 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
48. Defendants neither admit nor deny the allegations in paragraph 48 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
49. Defendants neither admit nor deny the allegations in paragraph 49 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
50. Defendants neither admit nor deny the allegations in paragraph 50 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
51. Defendants neither admit nor deny the allegations in paragraph 51 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
52. Defendants neither admit nor deny the allegations in paragraph 52 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

53. Defendants neither admit nor deny the allegations in paragraph 53 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
54. Defendants neither admit nor deny the allegations in paragraph 54 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
55. Defendants neither admit nor deny the allegations in paragraph 55 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
56. Defendants neither admit nor deny the allegations in paragraph 56 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
57. Defendants neither admit nor deny the allegations in paragraph 57 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
58. Defendants admit that Peter & Frank entered into a contract to purchase certain goods, but deny all other allegations contained in paragraph 58 of the Complaint.
59. Defendants neither admit nor deny the allegations in paragraph 59 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

60. Defendants neither admit nor deny the allegations in paragraph 60 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
61. Defendants neither admit nor deny the allegations in paragraph 61 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
62. Defendants neither admit nor deny the allegations in paragraph 62 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
63. Defendants neither admit nor deny the allegations in paragraph 63 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
64. Defendants neither admit nor deny the allegations in paragraph 64 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
65. Defendants neither admit nor deny the allegations in paragraph 65 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
66. Defendants neither admit nor deny the allegations in paragraph 66 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

67. Defendants neither admit nor deny the allegations in paragraph 67 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
68. Defendants neither admit nor deny the allegations in paragraph 68 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
69. Defendants neither admit nor deny the allegations in paragraph 69 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
70. Defendants neither admit nor deny the allegations in paragraph 70 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
71. Defendants neither admit nor deny the allegations in paragraph 71 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
72. Defendants neither admit nor deny the allegations in paragraph 72 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
73. Defendants neither admit nor deny the allegations in paragraph 73 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

74. Defendants neither admit nor deny the allegations in paragraph 74 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
75. Defendants neither admit nor deny the allegations in paragraph 75 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
76. Defendants neither admit nor deny the allegations in paragraph 76 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
77. Defendants neither admit nor deny the allegations in paragraph 77 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
78. Defendants neither admit nor deny the allegations in paragraph 78 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
79. Defendants neither admit nor deny the allegations in paragraph 79 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
80. Defendants neither admit nor deny the allegations in paragraph 80 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

81. Defendants neither admit nor deny the allegations in paragraph 81 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
82. Defendants neither admit nor deny the allegations in paragraph 82 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
83. Defendants neither admit nor deny the allegations in paragraph 83 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
84. Defendants neither admit nor deny the allegations in paragraph 84 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
85. Defendants neither admit nor deny the allegations in paragraph 85 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
86. Defendants neither admit nor deny the allegations in paragraph 86 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
87. Defendants neither admit nor deny the allegations in paragraph 87 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

88. Defendants neither admit nor deny the allegations in paragraph 88 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
89. Defendants neither admit nor deny the allegations in paragraph 89 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
90. Defendants neither admit nor deny the allegations in paragraph 90 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
91. Defendants admit that Peter & Frank, on or about September 26, 2006, received certain goods, but deny all other allegations contained in paragraph 91 of the Complaint.
92. Defendants deny all allegations contained in paragraph 92 of the Complaint.
93. Defendants deny all allegations contained in paragraph 93 of the Complaint.

COUNT I: MISDELIVERY OF CARGO
AS TO ALL DEFENDANTS

94. Defendants repeat and reallege each response to preceding paragraphs contained in the foregoing with the same force and effect as if set forth in full herein.
95. Defendants deny all allegations contained in paragraph 95 of the Complaint.
96. Defendants deny all allegations contained in paragraph 96 of the Complaint.
97. Defendants deny all allegations contained in paragraph 97 of the Complaint.
98. Defendants deny all allegations contained in paragraph 98 of the Complaint.

COUNT II: BREACH OF CONTRACT

AS TO PETER & FRANK AND KIM

99. Defendants repeat and reallege each response to preceding paragraphs contained in the foregoing with the same force and effect as if set forth in full herein.
100. Defendants admit that Peter & Frank entered into a contract to purchase certain goods, but deny all other allegations contained in paragraph 100 of the Complaint.
101. Defendants deny all allegations contained in paragraph 101 of the Complaint.
102. Defendants admit that Peter & Frank received certain goods, but deny all other allegations contained in paragraph 102 of the Complaint. .
103. Defendants admit that Peter & Frank received certain goods, but deny all other allegations contained in paragraph 103 of the Complaint. .
104. Defendants deny all allegations contained in paragraph 104 of the Complaint.

COUNT III: BREACH OF CONTRACT
AS TO BARO SHIPPING AND BARO SHIPPING'S U.S. AGENTS

105. Defendants repeat and reallege each response to preceding paragraphs contained in the foregoing with the same force and effect as if set forth in full herein.
106. Defendants neither admit nor deny the allegations in paragraph 106 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.
107. Defendants neither admit nor deny the allegations in paragraph 107 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

108. Defendants neither admit nor deny the allegations in paragraph 108 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

COUNT IV: UNJUST ENRICHMENT
AS TO PETER & FRANK AND KIM

109. Defendants repeat and reallege each response to preceding paragraphs contained in the foregoing with the same force and effect as if set forth in full herein.
110. Defendants admit that Peter & Frank received certain goods, but deny all other allegations contained in paragraph 110 of the Complaint.
111. Defendants deny all allegations contained in paragraph 111 of the Complaint.

COUNT V: CONVERSION
AS TO ALL DEFENDANTS

112. Defendants repeat and reallege each response to preceding paragraphs contained in the foregoing with the same force and effect as if set forth in full herein.
113. Defendants deny all allegations contained in paragraph 113 of the Complaint.
114. Defendants deny all allegations contained in paragraph 114 of the Complaint.

COUNT IV: NEGLIGENCE
AS TO ALL DEFENDANTS

115. Defendants repeat and reallege each response to preceding paragraphs contained in the foregoing with the same force and effect as if set forth in full herein.
116. Defendants deny all allegations contained in paragraph 116 of the Complaint.
117. Defendants deny all allegations contained in paragraph 117 of the Complaint.

- 118. Defendants deny all allegations contained in paragraph 118 of the Complaint.
- 119. Defendants deny all allegations contained in paragraph 119 of the Complaint.
- 120. Defendants deny all allegations contained in paragraph 120 of the Complaint.

COUNT VII: FRAUD
AS TO BARO SHIPPING, BARO SHIPPING'S U.S. AGENTS,
PETER & FRANK, KIM, 3 WIN, MERCURY AND HONG

- 121. Defendants repeat and reallege each response to preceding paragraphs contained in the foregoing with the same force and effect as if set forth in full herein.
- 122. Defendants deny all allegations contained in paragraph 122 of the Complaint.
- 123. Defendants deny all allegations contained in paragraph 123 of the Complaint.
- 124. Defendants deny all allegations contained in paragraph 124 of the Complaint.
- 125. Defendants deny all allegations contained in paragraph 125 of the Complaint.
- 126. Defendants deny all allegations contained in paragraph 126 of the Complaint.
- 127. Defendants deny all allegations contained in paragraph 127 of the Complaint.

COUNT VIII: CIVIL CONSPIRACY
AS TO ALL DEFENDANTS

- 128. Defendants repeat and reallege each response to preceding paragraphs contained in the foregoing with the same force and effect as if set forth in full herein.
- 129. Defendants deny all allegations contained in paragraph 129 of the Complaint.
- 130. Defendants deny all allegations contained in paragraph 130 of the Complaint.

COUNT IX: PUNITIVE DAMAGES
AS TO BARO SHIPPING, BARO SHIPPING'S U.S. AGENTS,
PETER & FRANK, KIM, 3 WIN, MERCURY AND HONG

- 131. Defendants repeat and reallege each response to preceding paragraphs

contained in the foregoing with the same force and effect as if set forth in full herein.

132. Defendants deny all allegations contained in paragraph 132 of the Complaint.

133. Defendants deny all allegations contained in paragraph 133 of the Complaint.

134. Defendants deny all allegations contained in paragraph 134 of the Complaint.

SEPARATE DEFENSES

FIRST DEFENSE

Plaintiff's claims are barred because the service of process was insufficient and defective.

SECOND DEFENSE

Plaintiff's claims are barred by doctrine of unclean hands.

THIRD DEFENSE

Plaintiff's claims are barred because Plaintiff failed to deliver the goods promised under the contract.

FOURTH DEFENSE

Plaintiff's claims are barred because Plaintiff delivered goods that were defective, non-conforming with the contract and not fit for intended purpose.

FIFTH DEFENSE

Plaintiff failed to pay duty and freight charges for the shipment of goods delivered. Defendants paid for the duty and freight charges which exceeds the gross sales proceeds for the goods. Therefore, there is no payment due from Defendants to Plaintiff.

SIXTH DEFENSE

Defendants acted lawfully without any malicious motive and did not intend or conspire to bring about Plaintiff any injury.

SEVENTH DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

EIGHTH DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of laches.

NINETH DEFENSE

Plaintiff's claims against Defendant Kim are barred because Defendant Kim as individual was not a party to the contract. Plaintiff has entered into contract with Defendant Peter & Frank, the corporation, and not Defendant Kim individually.

WHEREFORE, Defendants respectfully request the following relief:

1. A judgment in favor of Defendants denying Plaintiff all relief required in its Complaint in this action and dismissing Plaintiff's Complaint with prejudice;
2. That Defendants be awarded their costs of suit, including reasonable attorney's fees; and
3. That the Court award Defendant such further and other relief as this Court may deem just and proper.

COUNTERCLAIM

Defendants, Peter & Frank of NY, Corp. ("Peter & Frank"), by way of Counterclaim against Plaintiff, Easytex Corporation Limited ("Easytex"), says:

FIRST COUNT OF COUNTERCLAIM

1. Defendant Peter & Frank, the Counterclaimant, entered into a contract with Plaintiff Easytex on or about August 17, 2006 where Easytex was to deliver certain amount of textile or garment goods to Peter & Frank for the sum of \$1,469,740.
2. Easytex failed to deliver all required amount of goods under the contract.
3. Under the terms of the contract, Easytex was responsible for the payment of duty and freight for all the shipments of the goods to be delivered.
4. Easytex failed to pay duty and freight charges for the shipments delivered to Peter & Frank.
5. As a result of Easytex's failure to deliver required amount of good under the contract, Peter & Frank suffered foreseeable losses including, but not limited to, nominal damages, consequential damages, loss of profit, loss of good will, lost sales and harm to reputation.
6. As a direct and foreseeable result of Easytex's breach, Peter & Frank suffered damages in the amount of \$1,000,000.

SECOND COUNT OF COUNTERCLAIM

7. Defendant Peter & Frank repeats the allegations of the foregoing paragraphs as if set forth at length herein.
8. Easytex delivered certain good that was defective, non-confirming with the contract and not fit for their intended purpose.
9. As a result of Easytex delivering defective goods, Peter & Frank suffered foreseeable losses including, but not limited to, nominal damages, consequential damages, loss of profit, loss of good will, lost sales and harm to reputation.

10. As a direct and foreseeable result of Easytex's breach, Peter & Frank suffered damages in the amount of \$1,000,000.

WHEREFORE, Defendant Peter & Frank, Counterclaimant, demands judgment against Plaintiff Easytex, Defendant on the Counterclaim, as follows:

1. Dismissing Plaintiff's Complaint;
2. Awarding Defendant damages in the amount of \$1,000,000, together with any interest;
3. Awarding costs of suit, including reasonable attorney's fees; and
4. Awarding such further and other relief as this Court may deem just and proper.

Dated: June 29, 2007

/s/ Daniel K. Lee

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Peter & Frank of NY, Corp. and
Chul Kyu Kim*